

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**G.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Brooklyn, NY, Employer**

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**Docket No. 14-1844  
Issued: February 13, 2015**

*Appearances:*

*Thomas S. Harkins, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On August 20, 2014 appellant, through her representative, filed a timely appeal from a June 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant established a recurrence of total disability beginning September 2, 2011 causally related to her February 5, 1999 employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case was previously before the Board. On February 28, 2014 the Board issued an order dismissing appeal on the grounds that appellant's representative requested that the appeal be withdrawn.<sup>2</sup>

On February 8, 1999 appellant, then a 33-year-old modified letter carrier, filed a traumatic injury claim alleging that she injured her back and shoulders while lifting a tray of mail and then turning to resume racking. OWCP accepted the claim for a back strain, lumbar region. Appellant returned to limited duty eight hours a day March 23, 1999 and resumed her previous rehabilitation position on May 22, 1999.

On March 17, 2010 appellant claimed a material worsening of her back condition commencing November 24, 2009. By decision dated February 22, 2011, OWCP accepted the November 24, 2009 recurrence. This was based on the November 20, 2010 report from Dr. Leonard Langman, a Board-certified neurologist, who opined that appellant's lumbar radiculopathy was a recurrence of her February 5, 1999 low back injury.

On September 15, 2011 appellant filed a (Form CA-7) claim for a September 2, 2011 recurrence of injury and indicated that the pain in her back worsened while moving around. She awoke in pain on September 2, 2011 and went to the hospital the next day as the pain worsened.

Evidence of record included appellant's statement regarding how the injury occurred. In a September 20, 2011 Form CA-20, Dr. Langman noted that the September 7, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine showed lumbar radiculopathy. He also opined that appellant was totally disabled from September 6, 2011 as a result of injury sustained on the job.

By letter dated September 29, 2011, OWCP requested additional information. It received an admitting form, discharge summary, and notes from Staten Island University Hospital for the period September 3 and 4, 2011, which contained a finding of intractable back pain and which diagnosed muscle spasm. The hospital also conducted lumbar and cervical x-rays, which were included. A September 7, 2011 lumbar MRI scan provided an impression of disc bulges in the midline L2-3 and L5-S1 disc space levels and degenerative changes at L2-3 disc space level.

In an October 14, 2011 report, Dr. Langman noted the history of injury and referenced recurrences of February 5, 1999 and November 24, 2009. No mention of the September 2, 2011 recurrence or subsequent hospitalization was provided.

By decision dated November 4, 2011, OWCP denied the claimed September 2, 2011 recurrence.

On November 16, 2011 appellant requested reconsideration. In an October 4, 2011 note, Dr. Langman diagnosed her with lumbar radiculopathy with pain and spasm and opined that she was totally disabled.

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<sup>2</sup> Docket No. 14-190 (issued February 28, 2014).

Medical notes from Dr. Howard Baum, a Board-certified orthopedic surgeon, were also received. In a October 25, 2011 note, he reviewed appellant's file and stated that the initial injury of 1999 was consistent with a thoracic spine injury and that she continued to have thoracic and low back pain from June 28, 2010 when she aggravated this back condition again as she continued to have symptoms. In a December 6, 2011 note, Dr. Baum provided an assessment of long-standing thoracic and lumbar spine pain. In a January 3, 2012 note, he noted appellant's physical examination findings and opined that she remained totally disabled.

By decision dated February 15, 2012, OWCP denied the September 2, 2011 claimed recurrence. It also determined that appellant was not claiming a recurrence of disability related to her February 5, 1999 injury but rather a new traumatic injury for a new condition and converted her recurrence claim to a new traumatic injury claim under case file number xxxxxx169.

On February 21, 2012 Dr. Langman opined that appellant could return to work on February 27, 2012 in her rehabilitation position. He also completed a duty status report.

In a February 7, 2012 report, Dr. Baum indicated that appellant has radiculopathy symptoms to both upper and lower extremities but the electromyography (EMG) for the upper extremities was negative. He opined that she had a postural spinal, or foraminal stenosis and requested authorization for further diagnostic testing.

In a March 5, 2012 report, Dr. Langman noted that appellant injured her lower back on February 5, 1999. He indicated that on September 2, 2011, while in bed, she felt pain in the lower back radiating down her legs. Dr. Langman noted that appellant was admitted to hospital for muscle spasms on September 3, 2011 and discharged September 4, 2011. He noted that, since her initial injury, she complained of lower back pain with radiation to the left lower extremity. Dr. Langman presented examination findings and noted that the September 7, 2011 MRI scan of the lumbar spine showed disc bulges midline L2-3 and L5-S1. He provided an impression of lumbar radiculopathy, exacerbated, and opined that this was a recurrence of a lower back injury sustained while working on February 5, 1999.

In a March 5, 2012 report, Dr. Baum noted the history of the February 5, 1999 work injury. On September 2, 2011 appellant was lying down in bed when she had an acute event where she began to experience radiculopathy-type symptoms with sensation radiating to her legs. Dr. Baum noted that she has been treated conservatively for many years, but had a progressive increase in pain and numbness shooting down her lower extremities. He noted that the August 10, 2010 EMG revealed a left L5-S1 radiculopathy with a left peroneal neuropathy and that MRI scans have shown some bulging discs at multiple levels in appellant's lumbar spine. Dr. Baum diagnosed lumbar radiculopathy and opined that she could continue to work a modified assignment two hours a day with no lifting.

In an April 3, 2012 report, Dr. Baum diagnosed left L5-S1 radiculopathy by August 10, 2010 EMG. He opined that appellant should continue modified duty two hours a day with significant weight and bending restrictions. In a May 8, 2012 report, Dr. Baum stated that, while she continued to complain of pain in the lower back, she had no lumbar radiculopathy. He

continued to opine that appellant was totally disabled. Prescriptions for physical therapy and back support were also provided.

In a June 5, 2012 report, a Dr. Charles Pearlman<sup>3</sup> noted appellant's complaints of back pain and that she had been limited to work two hours a day. He opined that she continued to be moderately disabled and should avoid all pushing, pulling, lifting, or carrying.

Additional progress reports were received from Dr. Baum along with prescriptions for physical therapy and back brace. In a June 19, 2012 report, he opined that appellant had lumbar L5-S1 left radiculopathy. In a July 24, 2012 report, Dr. Baum noted her examination findings and that she would continue physical therapy. In an October 9, 2012 report, he continued appellant in her two-hour-a-day modified-duty assignment. In a November 6, 2012 report, Dr. Baum provided an assessment of chronic back pain, L5 spine radiculopathy and LS spine herniated nucleus pulposus. In December 4, 2012, January 8, February 5, and March 6, 2013 reports, he provided an assessment of lumbosacral spine derangement and radiculopathy of the lumbar spine.

On April 19, 2013 appellant's counsel inquired as to the status of his reconsideration request. By decision dated May 13, 2013, OWCP denied the reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

Additional medical evidence from Dr. Baum indicated decreased range of motion and lumbar derangement on May 6, 2013, lumbar derangement on June 11, July 9, August 13, and September 10, 2013. Prescriptions for physical therapy and back support were also received.

By decision dated November 6, 2013, OWCP vacated its decisions of February 15, 2012 and May 13, 2013 as a new claim was erroneously created when appellant filed the recurrence claim. It doubled case number xxxxxx169 into the current case file, with the current case file as the master case. In another decision dated November 6, 2013, OWCP affirmed the recurrence denial of November 4, 2011 as the medical opinion evidence in support of a causal relationship between the accepted injuries and the claimed September 2, 2011 recurrence was lacking.

On March 10, 2014 appellant, through counsel, submitted a March 10, 2014 reconsideration request, recorded by OWCP on March 17, 2014. Multiple medical reports and physical therapy notes dated January 2, 2013 onward were received.

By decision dated June 10, 2014, OWCP denied modification of its November 6, 2013 decision.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment

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<sup>3</sup> Dr. Pearlman's credentials are not of record.

that caused the illness.<sup>4</sup> When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>5</sup>

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> For each period of disability claimed, the employee has the burden of establishing that she was disabled for work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>8</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>10</sup>

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>11</sup> Appellant's burden of proving she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>12</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>13</sup>

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<sup>4</sup> 20 C.F.R. § 10.5(x).

<sup>5</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>6</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>7</sup> *Sandra D. Pruitt*, 57 ECAB 126 92005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>8</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *D.I.*, 59 ECAB 158 (2007).

<sup>10</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> *S.F.*, 59 ECAB 525 (2008).

<sup>12</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>13</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

## ANALYSIS

OWCP accepted that appellant sustained a back strain on February 8, 1999 and paid appropriate benefits, including a recurrence of November 24, 2009. Appellant was working limited duty at the time of injury and returned to her eight-hour limited-duty position March 23, 1999. She subsequently filed a recurrence claim for September 2, 2011 stating that her pain in her back got worse while moving around and she went to the hospital. OWCP erroneously converted the recurrence claim into a new traumatic injury under case file number xxxxxx169. In its November 6, 2013 decision, it doubled case file number xxxxxx169 into the current claim, with the current claim as the master file and denied the recurrence claim. In its June 10, 2014 decision, OWCP reviewed all the medical records relevant to the recurrence claim of September 2, 2011 and denied modification of its November 6, 2013 decision.

The Board has reviewed the medical record and finds that the evidence does not support, nor does appellant allege, that there was any change in her light-duty assignment on or about September 2, 2011. The Board has also reviewed the medical record and finds no reasoned opinion to support the claim that she sustained a spontaneous change in her medical condition on or about September 2, 2011 that was causally related to her January 5, 1999 work injury.

The record reflects that the last medical report prior to appellant's recurrence claim of September 2, 2011 was Dr. Langman's November 20, 2010 report in which he indicated that her lumbar radiculopathy was a recurrence of her February 5, 1999 low back injury. While this report predates her recurrence claim, it is noted that he did not explain or offer any medical rationale as to how her accepted back strain deteriorated over the years and resulted in a disabling lumbar radiculopathy.

There are no other medical reports of record dated before September 3, 2011, when appellant sought treatment for her back in the hospital for the alleged September 2, 2011 recurrence. The hospital record, which contains diagnosis of muscle spasm, and the various diagnostic tests completed provided no opinion as to the cause of her condition and also did not address recurrence of disability.<sup>14</sup> Thus, this report is of limited probative value.

Dr. Langman, in his September 20, 2011 CA-20 form, noted MRI scan evidence of lumbar radiculopathy and opined appellant was totally disabled from September 6, 2011 as a result of injury sustained on the job. However, he fails to address how the September 5, 1999 employment injury caused the currently diagnosed lumbar radiculopathy. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>15</sup> As previously noted, OWCP accepted only a back strain in this case. Appellant has the burden of proof to establish causal relationship between the conditions not accepted by OWCP and the February 5, 1999 employment injury.<sup>16</sup>

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<sup>14</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005).

<sup>15</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>16</sup> *Michael S. Mina*, 57 ECAB 379 (2006); *Kimper Lee*, 45 ECAB 565 (1994); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

In his October 14, 2011 report, Dr. Langman failed to mention the September 2, 2011 recurrence or that appellant had been hospitalized. In his October 4, 2011 note, he opined that she was totally disabled from lumbar radiculopathy. However, as in his earlier reports, Dr. Langman failed to address how the September 5, 1999 employment injury caused the lumbar radiculopathy.<sup>17</sup> These reports are insufficient to establish appellant's claim.

In his March 5, 2012 report, Dr. Langman noted the history of the February 5, 1999 injury and the event of September 2, 2011. He noted that the September 7, 2011 MRI scan of the lumbar spine showed disc bulges midline L2-3 and L5-S1. While Dr. Langman opined that appellant's lumbar radiculopathy was exacerbated and was a recurrence of the February 5, 1999 back injury, he offered no medical rationale for his opinion. He also failed to address how the September 5, 1999 employment injury caused the lumbar radiculopathy or resulted in disc bulges midline L2-3 and L5-S1.<sup>18</sup> Thus, this report is insufficient to establish appellant's claim.

Numerous medical reports from Dr. Baum were received. In his October 25, 2011 report, Dr. Baum opined that the 1999 injury was consistent with a thoracic spine injury and he opined in that report as well as in reports dated December 6, 2011 and January 3, 2012 that appellant had long-standing thoracic and lumbar spine pain. In his February 7, 2012 report, Dr. Baum opined that she has more of a postural spinal or foraminal stenosis. However, he did not address how the September 5, 1999 employment injury, which was accepted for back sprain, caused or aggravated the thoracic and lumbar spine pain or caused postural spinal or foraminal stenosis and disabled appellant. Furthermore, Dr. Baum did not address the claimed recurrence of September 2, 2011. Thus, these reports are insufficient to establish appellant's claim.

In his March 5, 2012 report, Dr. Baum noted the history of the February 5, 1999 work injury and appellant's radiculopathy-type symptoms she experienced on September 2, 2011. He noted that she had a left L5-S1 radiculopathy with left peroneal neuropathy by August 10, 2010 EMG and bulging discs at multiple levels in her lumbar spine by MRI scan. While Dr. Baum noted that appellant had a progressive increase in pain and numbness radiating down her lower extremities and diagnosed lumbar radiculopathy, he provided no opinion on the claimed recurrence of September 2, 2011, nor did he provide any medical rationale as to how the February 6, 1999 work injury could cause the conditions as diagnosed on EMG and MRI scan. Thus, this report is also insufficient to establish her claim.

The remainder of the medical evidence of record from Dr. Baum and Dr. Pearlman do not address the claimed recurrence of September 2, 2011 or provide any medical rationale as to how the February 6, 1999 work injury could cause appellant's disability or diagnosed conditions.

In summary, the medical evidence of record is unsupported by rationalized medical evidence, which demonstrates that the claimed recurrence was caused, precipitated, accelerated,

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<sup>17</sup> See *Michael E. Smith*, *supra* note 15.

<sup>18</sup> *Id.*

or aggravated by the accepted injury or which explains the nature of relationship between appellant's current conditions and her accepted injury.<sup>19</sup>

On appeal, appellant contends that the factual and medical basis of her recurrence has been established. However, for the reasons set forth above, she has not established either the claimed recurrence or that her current conditions are due to her accepted injury.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to establish a recurrence of disability on or after September 2, 2011 causally related to her February 5, 1999 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated June 10, 2014 is affirmed.

Issued: February 13, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> A.M., Docket No. 09-1895 (issued April 23, 2010) (when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA).